IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4364 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SECRETARY

Versus

COMPETENT OFFICER

Appearance:

1. Special Civil Application No. 4364 of 1985

MR DD VYAS for Petitioner No. 1

MR RP BHATT for Respondents No. 1-2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 07/12/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. By this petition under Articles 226 and 227 of the Constitution, the petitioner-Cooperative Society has challenged the judgment and order of the District Judge, Surendranagar in Civil Miscellaneous Application No.50 of 1980. That application No.50 of 1980 was filed under Section 10 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (`the Act' for short) for additional compensation upon being aggrieved by the compensation awarded by the Competent Authority under the said Act. The claim for additional compensation was based on the contention that there were 4950 big trees and equal number of small trees on the land bearing survey No.34 and a sum of Rs.10/- and Rs.5/- per tree for big and small trees respectively ought to have been awarded by the Competent Authority. As the award of the Competent Authority was made on 22.12.1979 and the application by the applicants, including the petitioner, was filed on 18.6.1980, an objection to the effect that the application was barred by limitation was raised and upheld in the impugned judgment. However, after appreciation of the evidence on record, it was also held that the applicants were deprived of the use of their land for a short period for installation of pipelines and the value of trees was not established. Accordingly, the award of compensation and the amounts awarded by the Competent Authority were held proper and confirmed while dismissing the application of the applicants by order dated 5.9.1984.

2. It appears from the record that the lands belonging to several parties, including the petitioner Society, were temporarily acquired for the purpose of laying pipelines for transport of petroleum and after necessary notification under Section 3 of the Act, the competent officer had determined and decided the claims lodged by the interested persons in respect of acquisition of lands. The petitioner Society had claimed an amount of Rs.2,06,265/- by way of compensation in respect of the lands under acquisition and mainly on the basis that number of trees and standing crops were removed or destroyed on account of the acquisition. The competent officer had, after hearing both the sides, awarded an amount of Rs.33,545/- in all to the petitioner by way of compensation by award dated 22.12.1979 which came to the knowledge of the petitioner on 21.1.1980. An application for certified copy of the award was made on 21.3.1980 and the same was ready for delivery on 6.5.1980, on which date the Courts being closed on account of summer vacation, an application being Civil

Misc. Application No.50 of 1980 under Section 10 was preferred on 16.6.1980 in which an additional compensation for Rs.1,72,720/- was claimed.

3. It was submitted by the learned senior counsel Mr.D.D.Vyas appearing for the petitioner that sub-section (2) of Section 12 of the Limitation Act applied in the facts of the case and, therefore, the date on which the impugned judgment was pronounced and the time required for obtaining a copy of the decree appealed from ought to have been excluded for the purpose of limitation. The contentions and grounds in the petition that the provisions of Section 10 of the Act insofar as it did not provide for an appeal, as also the Rule made thereunder which did not provide for condonation of delay were unconstitutional, were not pressed. It was, however, submitted that the provisions of the Limitation Act applied in absence of any express provision. As for the merits and quantum of compensation, the petitioner relied upon the solitary evidence of a witness whose testimony was recorded at Exh.38. He, admittedly, could not give exact figures and calculations to justify the claim for additional compensation. It was only submitted that the Court ought to have made its own assessment of market value of the lands under acquisition and considered the loss of income due out of agricultural operations on the lands in question. It was also submitted that the Court ought to have relied upon the panchnama made on the spot for assessing destruction or damage of the trees.

4. The Petroleum Pipelines (Acquisition of Right of User In Land) Act, 1962 is expressly enacted to provide for acquisition of right of user in land for laying petroleum pipelines. After the necessary provisions for publication of the notifications for acquisition and declaration of acquisition of right of user, the provisions for compensation is made under Section 10 which reads as under:

> "10 (1) Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.

(2) If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties, to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by the District Judge.

(3) The competent authority or the District Judge while determining the compensation under sub-section (1) or sub-section (2) as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of:-

(i) the removal of trees or standing crops, if any, on the land while exercising the powers under section 4, section 7 or section 8;

(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or

(iii) any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner;

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3.

(iv) Where the right of user of any land has vested in the Central Government, the State Government or the corporation, the Central Government, the State Government or the corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person, whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market

value of that land on the date of the notification under sub-section (1) of section 3.

(v) The market value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the District Judge referred to in sub-section (2), be determined by that District Judge.

(vi) The decision of the District Judge under sub-section (2) or sub-section (5) shall be final."

4.1 Section 17 empowers the Central Government to make rules for carrying out the purposes of the Act. The word "purposes" in that section is substituted by the word "provisions" by the Amendment Act of 1977. The relevant Rule 5 of the Petroleum Pipelines (Acquisition of Right of User in Land) Rules, 1963 provides that the application to the District Judge for determining the amount of compensation has to be preferred within 90 days of the receipt of the intimation from the competent authority for fixing of the compensation under Rule 4 (3).

5. Going through the award of the competent authority dated 22.12.1979, which is the only document annexed with the petition besides the impugned judgment of the District Judge, it was seen that after measurement of the lands required for the acquisition of right of user, individual notices and general public notices were issued and all the interested persons were heard during which none of the interested persons had produced any documentary evidence in support of the claim. In order to determine valuation of the lands, in absence of any other data, the sale statistics of the lands sold or purchased in the vicinity of the land under reference, were considered. As for the lands of village Kanpur in which the petitioner was interested, in the nine sale instances of the lands lying in the vicinity of the lands under acquisition for right of use, the average rate came to Rs.13.98 per Are as against the claim of Rs.150/- per Are. The valuation carried out through panchas suggested land value of Rs.12/- per Are for jirayat and Rs.50/- per Are for bagayat kind of lands. And having regard to the crop sown in the land during the last several years, it

was seen that the lands of all the affected survey numbers by the acquisition were of jirayat kind only. Therefore, considering the sale statistics, fertility of the land and prevailing average market value in respect of the nearby lands during the relevant period, Rs.14.00 were fixed as the prevailing market value of the lands. As for the claim for damage to trees, the competent authority relied upon a panchnama made in presence of the Deputy Mamlatdar and the Circle Inspector and after considering the number of big trees and small trees found in the area and the produce of charcoal from such trees, the value of Rs.7.50 per big tree and Rs.3.00 per small tree was determined. The claim of the petitioner for hedges was found not to be genuine as no hedge was found. After detailed calculations and consideration as above, the competent authority determined the compensation for land at one-tenth of the market value for acquiring the right of use. It also stands out from the award that the lands of village Kanpur in which the petitioner was interested were taken over for right of use on 14.4.1979 and upon termination of operation on 30.5.1979, the same were handed over back to the occupants. Thus, the compensation was awarded for right of use of the lands for a period of one-and-half months and towards crops and trees alleged to have been damaged or destroyed.

6. Even assuming that there was no bar of limitation operative against the application under Section 10 and without entering into the applicability of the provisions of Section 12 of the Limitation Act, it is clearly a case where no evidence worth the name in support of the claim was produced by the petitioner during the proceedings. Even in the solitary oral testimony of a witness at Exh.38, a copy of which is not produced, it appears to have been admitted that he had not brought any evidence to prove the market value of the lands; the petitioner had not sold any trees; that the trees which were on the lands were not cultivated by the applicants and no amount was spent by them for nurturing the trees and that he had no experience of the business of selling and purchasing trees. Therefore, when the petitioner was deprived of the use of their lands for a very short period for installation of pipelines and there was no specific evidence about the loss caused due to damage or destruction of trees, rejection of the claim of additional compensation was legal and proper.

7. In the circumstances and for the reasons discussed hereinabove, we are not inclined to interfere with the impugned judgment and order of the learned

District Judge in exercise of the extraordinary jurisdiction under Articles 226 and 227 of the Constitution. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

Sd/-
(D.M.Dharmadhikari,C.J.)

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)